

Town of Lexington
Planning Board
Subdivision Regulations

May 28, 2014

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§ 175-1.0 AUTHORITY AND PURPOSE

1.1. Authority; Title

- A. **AUTHORITY.** As authorized by MGL c. 41, ss. 81K through 81GG, known as the "Subdivision Control Law," and under the authority delegated to the Town of Lexington by Article 89 of the Amendments to the Constitution of the Commonwealth of Massachusetts, known as the "Home Rule Amendment," the Lexington Planning Board adopts these Rules and Regulations governing the subdivision of land in Lexington.
- B. **TITLE.** These Regulations are known and may be cited as the "Subdivision Rules and Regulations" or as the "Subdivision Regulations" or, within this document, as "these Regulations."
- C. **THESE REGULATIONS ARE GENDER NEUTRAL.** Any reference to the masculine gender should be interpreted to include the female gender and vice versa.

1.2. Approval and Compliance Required

- A. **UNAPPROVED SUBDIVISION PROHIBITED.** No person may make a subdivision, as defined in the Subdivision Control Law, of any land within the Town of Lexington, proceed with the improvement or sale of lots in an unapproved subdivision or the construction of a street or the installation of municipal services within them or undertake preliminary steps, such as the clearing of land, excavation, site preparation or other preparatory steps, leading to the construction of a street or the installation of municipal services or facilities, for which requirements or standards are in these Regulations, unless and until a definitive subdivision plan has been submitted to, approved, and endorsed by the Planning Board and recorded in the Registry of Deeds or the Land Court, and only then according to the conditions of approval and the procedures set out in these Regulations.
- B. **PLAN TO BE APPROVED IF IT COMPLIES.** In accordance with MGL c. 41, s. 81M, the Planning Board must approve any duly filed subdivision plan if the plan conforms to the provisions of these Regulations and conforms to the recommendation of the Board of Health.
- C. **ISSUANCE OF BUILDING PERMITS** The Building Commissioner may not issue any permit for erection of a building until first satisfied (a) that the lot on which the building is to be erected is not within a subdivision, or (b) that a way furnishing the access to the lot within a subdivision as required by the Subdivision Control Law is shown on a recorded plan, constructed according to that plan, and that any conditions endorsed thereon limiting the right to erect or maintain buildings on such lot have been satisfied, and (c) that all other applicable requirements have been met.

1.3. Purpose and Objectives

- A. **PURPOSE.** The powers of the Town of Lexington and of the Planning Board under the Home Rule Amendment of the Massachusetts Constitution are exercised to promote the general welfare and convenience, protecting the health and safety of the residents of Lexington and of adjoining communities that may be impacted by the construction of a subdivision in Lexington by:

- (1) Identifying and securing, for present and future residents, the beneficial impacts of growth and development;
- (2) Identifying and avoiding the negative impacts of growth and development; and
- (3) Ensuring that future growth and development are of a type and design and are in a location served by adequate public services and facilities.

B. MEANS. These Regulations are intended to achieve those purposes by:

- (1) Providing adequate access to all of the lots in a subdivision by streets and walkways that will be safe and convenient for travel;
- (2) Lessening congestion in such streets and in the adjacent public streets;
- (3) Reducing danger to life and limb;
- (4) Securing safety in the case of fire, flood, panic and other emergencies;
- (5) Ensuring compliance with the frontage and access provisions of the Lexington Zoning Bylaw;
- (6) Securing adequate provision for water, sewerage, drainage, underground utility service, fire, police, and other services where necessary in a subdivision;
- (7) Coordinating the streets and walkways in a subdivision with each other and with the streets and walkways in adjacent neighborhoods;
- (8) Facilitating a detailed review by Town officials and by the public of proposed subdivisions to determine the adequacy of the facilities proposed to be provided and their impact on public facilities and services and on adjoining land; and
- (9) Establishing a sequence of review that progresses from the general to the detailed to avoid unnecessary delay or expense to both the Town and the applicant.

1.4. Forms

The Planning Board may create forms for the convenient administration of these Regulations. These forms are not part of the Regulations. Forms may be added or deleted and the content of the forms may be revised from time to time by administrative action of the Planning Board.

1.5. Consistency with State Law; Separability

- A. CONSISTENCY WITH STATE LAW.** In case of conflict between these Regulations and state law, and for matters not covered by these Regulations, the Subdivision Control Law, MGL c. 41, ss. 81K to 81GG, inclusive, and amendments to them, apply.
- B. SEPARABILITY.** The provisions of these Regulations are separable. If any provision of these Regulations, or any decision or determination in the administration of them, is adjudged by a court of competent jurisdiction to be unconstitutional, invalid, or void, the court's decision does not affect any other provision of these Regulations or the administration of them.

- C. INVALIDATION BY CHANGES TO STATE LAW. Any part of these Regulations that may later be invalidated by a new state law, or by amendment of an existing state law, must automatically conform to the new or amended state law and will be deemed effective immediately, without recourse to public hearing and the required procedures for amendment and repeal of these Regulations.

§ 175-2.0 DEFINITIONS

In the interpretation of these Regulations, the definitions in MGL c. 41, s. 81L, the Subdivision Control Law, and in §135-10.0, Definitions, of the Lexington Zoning Bylaw, are incorporated by reference and apply as if set forth here in full. In addition to those terms, the terms set forth below mean the following.

APPLICANT: An owner or an agent, representative, assigns, or successors in title of such owner, as long as the agent or representative who is not an attorney at law has written authorization to act for the owner. Such authorization must be valid for 180 days, and may be renewed.

BOARD: The Planning Board of the Town of Lexington.

DEAD-END STREET, ROAD, or WAY: Either [A] a street providing only one vehicular access route to the general street network of the Town or [B] a system of two or more intersecting streets whose overall layout provides only one vehicular access route to the general street network of the Town. Multiple vehicular access points less than 125 feet apart are considered a single access point.

ENGINEER: A professional engineer registered to practice in Massachusetts.

FRONTAGE: A lot boundary line which abuts a public or private way and across which line there is legal and physical access, as specified in the Lexington Zoning By-Law.

LANDSCAPE ARCHITECT: A landscape architect registered to practice in Massachusetts.

LAND SURVEYOR: A land surveyor registered to practice in Massachusetts.

LOT: An area of land in one ownership, with definite boundaries, used, or available for use, as the site of one or more buildings complying with the area, frontage and other requirements of the Zoning By-law of the Town of Lexington.

OWNER: An owner of record as shown by the records in the Middlesex County Registry of Deeds or Land Court Registry of any interest in land which is affected by an application.

PARCEL: An area of land in one ownership, with definite boundaries, other than a Lot.

PLAN, DEFINITIVE: A subdivision plan meeting the requirements of §175-6.0 of these Regulations, and of the Subdivision Control Law for definitive plans. A definitive plan includes supporting materials, which are filed with the Board but not recorded.

PLAN, PRELIMINARY: A subdivision plan submitted in accordance with §175-5.0 of these Regulations and with MGL c. 41, s. 81S.

PLANNING DIRECTOR: The person appointed under the Lexington Selectmen/Town Manager Act to be the Planning Director for the Town of Lexington, or when authorized, his or her designee.

PROFILE: A vertical section of streets, storm drainage, and sanitary sewer facilities.

REGISTERED MAIL: Registered or certified mail.

REGISTRY OF DEEDS: The Registry of Deeds in Middlesex County, including when appropriate, the recorder of the Land Court.

SIGHT DISTANCE: A length of road surface that a particular driver can see with an acceptable level of clarity, computed according to the most recent edition of the American Association of State Highway and Transportation Officials' (AASHTO) *A Policy on Geometric Design of Highways and Streets*.

STANDARD SPECIFICATIONS: The latest revision of Town of Lexington, Massachusetts, Department of Public Works' Division 2 Standard Specifications.

SUBDIVISION CONTROL LAW: Sections 81K to 81GG, inclusive, of MGL c. 41 and any acts in amendment of them, addition to them or substitution therefore.

UTILITIES: Services, including sanitary sewers, stormwater drainage systems, water supply piping, fire alarm conduits, electric and telephone wiring, cable television service, natural gas service, and their appurtenances.

WETLANDS: All resource areas protected under MGL c. 131, s. 40, as may be amended. Buffer areas are excluded from this definition.

ZONING BY-LAW: The Zoning By-law of the Town of Lexington.

§ 175-3.0 GENERAL REGULATIONS

3.1. Applicability

The rules and regulations outlined in this Section apply to all Applications under these Regulations.

3.2. Ownership

- A. CONSENT OF OWNERS REQUIRED FOR ALL APPLICATIONS. The applicant must state the nature of its interest in the property and all owners must sign any application. Where an owner is not a natural person, documents must be submitted indicating who has authority to enter into an agreement on its behalf.
- B. RIGHTS OF OTHERS IN LAND SHOWN ON PLAN. The Board's approval of a plan does not affect any rights others may have in or over the land to be subdivided or improved, nor does it give the applicant the right to perform work on land owned by others.

3.3. Applications

- A. CONTACT WITH TOWN DEPARTMENTS THROUGH PLANNING DEPARTMENT. The Planning Department should be the point of contact for other Town departments when requesting information about site construction for developments subject to these Regulations.
- B. PRE-APPLICATION CONFERENCE. The Planning Department staff may hold a pre-application conference with an Applicant. The purpose of the pre-application conference is for the staff to give an interpretation of these Regulations and an explanation of the Board's procedures. Review of proposed plans occurs after an application is filed.
- C. APPLICATIONS SUBMITTED THROUGH PLANNING DEPARTMENT. Requests for action on development activities must first be submitted to the Planning Department staff to be reviewed and scheduled for action at a Board meeting. Such requests may not be presented directly to the Board at a meeting.
- D. DELIVERY OF THE APPLICATION AND PLAN.
 - (1) Filing by delivery or by mail to the Board. The applicant must submit the application, the plan, other documents, if applicable, and the fee:
 - (a) By delivery, during regular working hours, to the Planning Department; or
 - (b) By registered mail to the Lexington Planning Board.
 - (2) Filing or delivery to Board of Health. The applicant must submit an application for approval of a preliminary subdivision plan or a definitive subdivision plan to the Board of Health in accordance with their regulations.
 - (3) Notice to Town Clerk. Where required by Massachusetts law, the applicant must give written notice of an application to the Town Clerk.

E. DOCUMENT AND PLAN FORMATTING REQUIREMENTS

- (1) All plans and other application material intended to be recorded must meet the latest version of either the Deed Indexing Standards for the Commonwealth of Massachusetts or the Manual of Instructions for the Survey of Lands and Preparation of Plans to Be Filed in the Land Court. These documents are available on the Board's website.
- (2) Vertical Datum. All elevations shown on profiles and topographic plans must be based on the North American Datum of 1983 (NAD83) and identify all benchmarks used and their elevations.
- (3) Typewritten or printed material must be submitted in 8 1/2 inch by 11-inch format. Oversized brochures or reports will not be accepted.
- (4) Information in digital form. All submitted information and plans must be supplied both in written form as required elsewhere in these Regulations and in digital form. The digital information must be submitted in its native format (e.g., MS Word, or AutoCAD) and in Portable Document Format (PDF).

F. COMPLETE AND CORRECT INFORMATION. The applicant is responsible for the submittal of complete and correct information to the Board, which if not provided may constitute grounds for the rejection of a plan for review, disapproval of a plan or rescission of a previously approved plan.

G. ALL ACTIONS AT PUBLIC MEETINGS. All reviews, decisions and other actions of the Board related to an Application must be made in a public meeting of the Board for which public notice has been given under MGL c. 39, s. 23B.

H. NO ALTERATION TO APPROVED PLAN. No alteration may be made to a plan after it has been approved or endorsed by the Board.

I. OBTAIN ALL PERMITS AND RIGHTS.. The failure, or inability, to obtain all necessary permits, licenses, releases, or rights may constitute grounds for the disapproval of a plan or rescission of a previously approved plan.

3.4. Fees

A. OBJECTIVES. The objectives of the fee schedule are:

- (1) That the costs incurred by the Town of Lexington in the review, approval and inspection of plans submitted in compliance with these Regulations result primarily from, and should be considered as part of the ordinary cost of, the business of real estate development;
- (2) To approach a full reimbursement to the Town for the cost of providing the review, approval and inspection of a subdivision or other development proposal and other actions to administer these Regulations; and
- (3) To create incentives so that applicants will comply fully and accurately with these Regulations to reduce the time spent by Town employees on review, inspection, and administration, particularly of material submitted several times.

B. FEES REQUIRED. An applicant submitting a proposed plan, a revision to an approved plan or an application for rescission of a previously approved plan

must pay the fees indicated in the fee schedule. If the fees do not come with the application, the application will not be accepted for processing. Fees must be paid for the Town's actions relative to the recording of an approved subdivision plan and for the implementation and construction of an approved plan as in the schedule.

- C. COSTS OF ADVERTISING AND HOLDING PUBLIC HEARING. The applicant is responsible for the costs of publishing the legal notice for any public hearing. If the Board is required to hold the public hearing in a building other than the Town Office Building and there are costs associated with meeting in another building the applicant is responsible for those costs.
- D. EXPENSE OF PREPARING PLANS AND OTHER DOCUMENTS. The applicant is responsible for the expense of the design, preparation of legal documents, studies, review of plans, recording and filing of plans, reproduction of plans and copies of them or studies and reports related to them and all other expenses in relation to the submittal, review, and actions on an application for approval or endorsement of a plan whether it is approved by the Board or not.
- E. NO REFUND UPON WITHDRAWAL. No fees will be refunded if an application for endorsement or approval of a plan is withdrawn.
- F. FEE SCHEDULE.

- (1) Administrative Fees.

- (a) Applicability. An Administrative Fee will be assessed to offset the expense of review by the Board and its office with regard to all applications set forth in F.(1)(c), below.
- (b) Submittal. Administrative Fees must be submitted at the time of the submittal of the application. Failure to submit this payment is grounds for denial of the application.
- (c) Schedule of Administrative Fees. The following schedule applies to the types of applications to the Board:
 - [1] Approval Not Required (ANR) Plans - \$100.
 - [2] Preliminary Plans, Residential - \$1,000 plus \$200 per lot.
 - [3] Preliminary Plans, Nonresidential - \$1,000 plus \$500 per lot.
 - [4] Definitive Plans, Residential - \$2,000 plus \$700 per lot (\$500 per lot if a preliminary plan was filed).
 - [5] Definitive Plans, Nonresidential - \$3,000 plus \$500 per lot
- (d) Fees for Revised Applications. Because the Administrative Fee is based on the proposed number of lots, should the proposed number of lots increase, the applicant must pay a fee equivalent to the difference between the original fee paid and the fee that would have been paid had the original submission included the additional lots. Failure to make this payment is grounds for denial of the application.
- (e) Fee Waivers. The Board may waive or reduce any Administrative Fee, if, in the opinion of the Board, unusual circumstances exist regarding the subject property or the applicant.

- (f) Refund. Once the review process has begun, the Board will not refund Administrative Fees, including the case of withdrawal of the application by the applicant.

(2) PROJECT REVIEW FEES.

- (a) Applicability. In addition to an Administrative Fee, the Board may impose a Project Review Fee on those applications which require, in the judgment of the Board, review by outside consultants due to the size, scale or complexity of a proposed project, the project's potential impacts, or because the Town lacks the necessary resources to perform the review work related to the permit or approval. In hiring outside consultants, the Board may engage engineers, planners, lawyers, designers, or other appropriate professionals able to assist the Board and to ensure compliance with all relevant laws, ordinances, by-laws, and regulations. Such assistance may include, but shall not be limited to, analyzing an application, monitoring or inspecting a project or site for compliance with the Board's decisions or regulations, or inspecting a project during construction or implementation.

- (b) Submittal. Should the Board require outside review, a Project Review Fee must be submitted to the Planning Department for deposit in an account established pursuant to G.L. c. 44 s. 53G (53G Account). Failure to make this payment is grounds for denial of the application.

- (c) Schedule of Project Review Fees. The following schedule applies to the types of applications to the Board set forth below. Where more than one type of application has been submitted for Board action, only the largest of the applicable Project Review Fees may be collected for deposit into the 53G Account, and not the sum of those fees.

[1] Initial Preliminary Plan, Modification of a Preliminary Plan, or Modification of a Definitive Plan:

| Project Size | Fee |
|-------------------|----------|
| 1 - 15 Lots | \$ 2,000 |
| 16 - 20 Lots | \$ 3,000 |
| 21 - 25 Lots | \$ 4,250 |
| More than 25 Lots | \$ 5,000 |

[2] Initial Definitive Plan:

| Project Size | Fee |
|-------------------|-----------|
| 1 - 15 Lots | \$ 4,000 |
| 16 - 20 Lots | \$ 6,000 |
| 21 - 25 Lots | \$ 10,000 |
| More than 25 Lots | \$ 20,000 |

- (d) Replenishment. When the balance in an applicant's 53G Account falls below twenty-five percent (25%) of the initial Project Review Fee, as

imposed above, the Board may require a Supplemental Project Review Fee to cover the cost of the remaining project review. Failure to make this payment is grounds for denial of the application.

- (e) Inspection Phase. After the approval of a Definitive Plan, the Board may require a Supplemental Project Review Fee to ensure the availability of funds during the inspection phase of the review process. Failure to make this payment is grounds for rescission of approval.
- (f) Handling of Project Review Fees. Project Review Fees must be turned over to the Town Treasurer by the Planning Department for deposit into a 53G Account.
 - [1] Outside consultants retained by the Board to assist in the review of an application must be paid from this account.
 - [2] The Board must provide the following information in a timely fashion on request of the applicant:
 - [a] A statement of principal and interest based on information from the Town Accountant;
 - [b] A report of all checks authorized for issuance; and
 - [c] An estimate of bills pending from consultants for work completed, or in progress, but not invoiced.
 - [3] Remaining funds in the 53G Account, including accumulated interest, must be returned to the applicant or the applicant's successor in interest, at the conclusion of the review process, as defined below. For the purpose of this section, any person or entity claiming to be an applicant's successor in interest must provide the Board with documentation establishing such succession in interest.
 - [a] With the approval or disapproval of a Preliminary Subdivision Plan.
 - [b] With the disapproval of a Definitive Subdivision Plan.
 - [c] With the release of the performance bond at the end of construction of an approved Definitive Subdivision Plan.
- (g) Appeal. The choice of a consultant by the Board for the review of an application may be appealed by the applicant in writing to the Board of Selectman as provided in MGL c. 44 s. 53G. The required time limits for action upon an application by the Board are automatically extended for duration of the appeal.
- (3) DELINQUENT ACCOUNTS. The following rules apply to fees owed to the Board by applicants:
 - (a) Due date. Administrative fees are due at the time of submittal of an application. Project Review fees and Supplemental Project Review fees are due within 14 days from the date that the Board determines that they are required.

- (b) Monthly Interest Charge. All fees past due by one month from the date of invoice are subject to a monthly interest charge based upon an annual interest rate of 14%.
- (c) Costs of Collection. All costs of collection associated with past due accounts must be borne by the applicant.
- (d) Current Delinquents. All applicants owing fees to the Board at the time of any amendment to these provisions of the regulations must be sent the following:
 - [1] A duplicate notice of the amount past due.
 - [2] A copy of the applicable sections of these regulations with all amendments clearly indicated.
 - [3] Notice of a 30-day grace period before the commencement of any changes in interest rates or charges.
- (e) Failure to pay. Failure to pay delinquent fees, interest, or costs of collection after 30 days notice is grounds for denial of an application or rescission of an approved application.

3.5. Waivers

- A. WAIVER OF SPECIFIC RULES AND REGULATIONS. In accordance with MGL c. 41, s. 81R, the Board may waive strict compliance with specific provisions of these Regulations in any particular case where such action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and of these Regulations. An applicant is not entitled to a waiver and the Board, in its discretion, may decline to approve a request for a waiver.
- B. APPLICATION FOR A WAIVER. Any person requesting a waiver must submit the following with the application for approval of the subdivision plan:
 - (1) A written request that identifies the specific provision of these Regulations for which the waiver is requested;
 - (2) A plan showing how the site would be developed if the plan complied with that provision of these Regulations and no waiver were granted or a statement that such development is not possible; and
 - (3) A narrative statement that explains how granting the waiver would be in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law.
- C. EFFECT OF NOT REQUESTING OR GRANTING A WAIVER. If a request for a waiver is not submitted and one or more features of a proposed plan do not follow these Regulations, or the Board does not grant the waiver, the noncompliance may be the basis for disapproval of the application.
- D. DECISION ON REQUEST FOR A WAIVER.
 - (1) If the Board waives any provision or standard of these Regulations, it must:
 - (a) Determine that its action is in the public interest and not inconsistent with the intent and purpose of the Subdivision Control Law and of these Regulations; and

- (b) Include specific reasons for its action in the decision approving the subdivision plan.
- (2) The Board may make its approval of a waiver dependent on such conditions as will achieve the objectives of the provision or standard waived.

§ 175-4.0 APPROVAL NOT REQUIRED PLANS

4.1. Applicability

- A. GENERAL. Any person who wishes to record a plan in the Registry of Deeds or in the Land Court and who believes that the plan does not require approval under the Subdivision Control Law may submit the plan to the Board accompanied by documentation, as set forth below, to show that the plan does not require approval.
- B. CRITERION. A plan does not require approval under the Subdivision Control Law if it does not show a subdivision, as defined in MGL c. 41 s. 81L.

4.2. Submission

- A. NUMBER OF COPIES. The submitted application shall include:
 - (1) One original Mylar copy, with signature block;
 - (2) Five large (24 inches by 36 inches) format black line copy; and
 - (3) Ten small (11 inches by 17 inches) format black line copy.
- B. INFORMATION REQUIRED. An applicant must submit:
 - (1) Copies of the plan, as described above;
 - (2) A properly executed application form; and
 - (3) Evidence showing the basis upon on which the applicant claims that approval under the Subdivision Control Law is not required.
- C. INFORMATION ON PLAN. Each sheet of the plan must have the following information:
 - (1) Title block containing the name and section designation, if any, of the proposed development;
 - (2) The name of the applicant, and the property owner if not the same;
 - (3) The name, address and imprint of the professional registration stamp of the landscape architect, engineer, or land surveyor responsible for the preparation of each sheet;
 - (4) A title for each sheet and a number for each sheet, with sheets consecutively numbered;
 - (5) A visual scale and a North arrow, the direction of which must be the same for all sheets;
 - (6) The date of original preparation and the date of each of any later revisions, with the revisions noted;
 - (7) Space for endorsement by the Board, with room for the signature of each member, and the date of the endorsement below the signatures;
 - (8) If applicable, reference to a certificate of action or a special permit, a covenant and the date of those actions;

- (9) Space for the Town Clerk's certificate of no appeal and the date of that certification below the space for the Clerk's signature;
- (10) A legend denoting any signs and symbols used on the plan and not otherwise explained.
- (11) The names of the owners of all abutting lots and parcels as they appear on the most recent Real Estate Tax Commitment List prepared by the Board of Assessors;
- (12) All lots and parcels affected by the proposed change in property line(s);
- (13) All existing and proposed property lines, lot frontages, lot areas, and easements that may affect access to a lot. Each lot must show both the street address and street number, if assigned, as shown on the Assessors' property maps. Proposed lots must be numbered and parcels be lettered for identification;
- (14) The name of the street providing frontage and access to the lots; the width of the right-of-way and the width of the street pavement, including any variations in width, along the frontage of the lots which are being subdivided;
- (15) The status of the street along the frontage of the lots, i.e. whether the street is a public way, a way shown on an approved subdivision plan and constructed according to that plan, or a way in existence on April 4, 1948. If the street changes from one status to another, the line at which the status changes must be shown by means of dimensions from a reference point that can be readily determined;
- (16) The location of all permanent bounds, markers and monuments clearly differentiated as to whether existing or proposed;
- (17) The words "Planning Board approval under Subdivision Control Law not required" must appear above the space for the signatures; a line for the date of the Board's action and the words "The endorsement above is not a determination by the Planning Board as to compliance with the Zoning Bylaw" must appear below the space for the signatures.

4.3. Review and Decision Process

- A. ACTION ON APPLICATION BY PLANNING BOARD. Within 21 days of receipt of a complete application, and without holding a public hearing, the Board must determine whether the plan requires approval under the Subdivision Control Law.
- B. ACTION ON APPLICATION BY PLANNING DIRECTOR. If the Board does not meet within 21 days of receipt of a plan which an applicant believes does not require approval, because no Board meeting is scheduled, or if a scheduled meeting is canceled or postponed due to lack of a quorum or weather conditions, the Planning Director is authorized to act for the Board and must note the authorization on the plan. He or she must first:
 - (1) Review the plan with the Chairman or, in his or her absence, the Vice Chairman of the Board;

- (2) Determine whether the plan constitutes a subdivision as defined by MGL c. 41, s. 81L; and
- (3) Either endorse the plan or not endorse the plan, in which case he or she must notify the applicant and the Town Clerk of the reasons for not endorsing the plan.

4.4. Endorsement

- A. **ENDORSEMENT.** If the Board determines that the plan does not require approval, the majority of the members must endorse the plan with their signatures. If the Board is not able to sign the plan at that time, the Board may authorize the Planning Director to sign the plan and such authorization must be noted on the plan. If the Board endorses a plan not requiring subdivision approval, it may add notes indicating why approval is not required.
- B. **ENDORSEMENT IS NOT AN APPROVAL.** Endorsement of the plan is not an approval of any subdivision or a determination by the Board as to conformance with the Zoning Bylaw. It is only an endorsement that the plan does not require approval under the Subdivision Control Law.
- C. **PLANS THAT DO REQUIRE APPROVAL.** If the Board determines that the plan does require approval under the Subdivision Control Law, it must, within 21 days of receipt of a complete application, give written notice of its determination, stating its reasons, to the Town Clerk and to the applicant.
- D. **FAILURE TO ACT WITHIN 21 DAYS.** If the Board, or the Planning Director as provided in § 175-4.3B, fails to act upon a plan considered to be complete or fails to notify the Town Clerk of its reasons for not endorsing the plan within the required twenty-one-day period, the plan must be deemed not to require approval under the Subdivision Control Law. The applicant may then request, and the Town Clerk must issue, a certificate that the plan is approved because of the Board's failure to act.
- E. **PROCEDURE AND TIME ALLOWED FOR RECORDING.** The applicant must record the endorsed plan within the time provided for in the Subdivision Control Law at the Registry of Deeds and must furnish the Planning Department with a certified copy of the plan, as recorded.

4.5. Endorsement Criteria

- A. **CRITERIA.** The Board must determine that approval under the Subdivision Control Law is not required and must endorse the plan if and only if each lot and parcel shown on the plan either:
 - (1) Has at least the minimum frontage on a street required by the Zoning Bylaw, or
 - (2) Is to be joined to an abutting lot and the following note appears on the plan: "Parcel X is to be joined to Lot Y and is not to be considered to be a separate lot." or
 - (3) The note "For the purposes of the Subdivision Control Law, parcel X cannot be used for the site for a building." appears on the plan.

- B. EXISTING BUILDINGS. Notwithstanding the criteria above, the Board must endorse a plan where every lot or parcel shown on the plan:
- (1) Contains a substantial building which existed on April 4, 1948; or
 - (2) Is to be joined to an abutting lot and the following note appears on the plan: "Parcel X is to be joined to Lot Y and is not to be considered to be a separate lot." or
 - (3) The note "For the purposes of the Subdivision Control Law, parcel X cannot be used for the site for a building." appears on the plan;
- C. FRONTAGE ON UNACCEPTED STREET. An unaccepted street not shown on a plan approved under the Subdivision Control Law must meet the standards for streets and ways described in Section 7.2 of these Regulations to provide the frontage required in § 175-4.5A.
- D. FRONTAGE ON SUBDIVISION STREET. An unaccepted street shown on a plan approved under the Subdivision Control Law must meet the following conditions to provide the frontage required in § 175-4.5A:
- (1) The construction of the subdivision street has been completed, has been approved by the Town Engineer and the Board, and the surety being held for completion of the subdivision has been released; or
 - (2) An ANR plan may be submitted to change the shape or size of lots shown on a previously approved subdivision plan, provided the approved way is built or a performance guarantee is in place.

§ 175-5.0 PRELIMINARY SUBDIVISION PLANS

5.1. Applicability

A. RESIDENTIAL SUBDIVISIONS. The Board recommends, but does not require, a preliminary subdivision plan for residential subdivisions.

B. NONRESIDENTIAL SUBDIVISIONS. As required by MGL c. 41, s. 81R, preliminary subdivision plans for nonresidential subdivisions are required before submission of a definitive subdivision plan.

5.2. Relation to Sketch Plan

When land which is the subject of a special permit residential development under §135-6.9 of the Zoning Bylaw is also proposed to be subdivided, a sketch plan, as defined in the Board's Development Regulations, may be submitted in lieu of a preliminary plan.

5.3. Submission

A. NUMBER OF COPIES. The submitted application shall include:

- (1) One original, copy-ready application packet (including any drainage and stormwater management plans);
- (2) Ten bound copies of the application packet (excluding any drainage and stormwater management plans);
- (3) Three copies of the drainage and stormwater management plans;
- (4) Four large (24 inches by 36 inches) format sets of plans;
- (5) Five large format site construction sheets;
- (6) Ten small (11 inches by 17 inches) format sets of plans; and

B. INFORMATION REQUIRED. Each sheet of the plan must have the following general information:

- (1) The subdivision name, boundaries, north point, date, scale, legend and title "Preliminary Plan";
- (2) The names of the record owner and the applicant and the name of the designer, engineer or surveyor;
- (3) The names of all abutters, as determined from the most recent local tax list;
- (4) The existing and proposed lines of streets, ways, easements and any public areas within the subdivision in a general manner;
- (5) The proposed system of drainage, including adjacent existing natural waterways, in a general manner;
- (6) The approximate boundary lines of proposed lots, with approximate areas and dimensions;
- (7) The names, approximate location and widths of adjacent streets; and
- (8) The topography of the land in a general manner.

In addition, the applicant must submit a written list of all waivers, citing specific provisions of these Regulations that are needed for the preliminary subdivision plan to be approved.

5.4. Decision

- A. SCOPE OF DECISION. Within 45 days after the proper submittal to the Board and to the Board of Health of a preliminary subdivision plan, the Board must approve the preliminary subdivision plan, with or without waivers and conditions, or disapprove the plan, stating the reasons for the disapproval. The Board may include recommendations for features that should be included in a definitive subdivision plan.
- B. APPROVAL CRITERIA. The standards for approval of a definitive subdivision plan will be the basis for the decision on a preliminary subdivision plan to the extent permitted by the information submitted as part of a preliminary subdivision plan.
- C. RELATIONSHIP TO DEFINITIVE PLAN.
 - (1) Approval of a preliminary subdivision plan does not constitute approval of a subdivision or guarantee that the Board will approve a definitive subdivision plan. The Registry of Deeds is not permitted to record a preliminary subdivision plan.
 - (2) Disapproval of a preliminary subdivision plan does not prevent the submission of a definitive subdivision plan. If a definitive plan complies with the Subdivision Regulations, the Board must approve it.

§ 175-6.0 DEFINITIVE SUBDIVISION PLANS

6.1. Submission

- A. COORDINATION BY LANDSCAPE ARCHITECT. A landscape architect must be responsible for the coordination of the physical planning of the proposed development.
- B. NUMBER OF COPIES. The submitted application shall include:
- (1) One original, copy-ready application packet (including any drainage and stormwater management plans);
 - (2) Ten bound copies of the application packet (excluding any drainage and stormwater management plans);
 - (3) Three copies of the drainage and stormwater management plans;
 - (4) Four large (24 inches by 36 inches) format sets of plans;
 - (5) Five large format site construction sheets; and
 - (6) Ten small (11 inches by 17 inches) format sets of plans.
- C. PLANS REQUIRED. Information presented in the definitive subdivision plan must be based on field surveys except as noted below. A definitive subdivision plan must include the following:
- (1) Title Sheet. A title sheet showing all land within 500 feet of any part of the tract that is the subject of the application and showing:
 - (a) All lot, parcel, and right-of-way lines, in a general manner;
 - (b) Existing contours at two-foot intervals;
 - (c) Principal natural features, as described in the site analysis map, described below, but shown more generally than in the site analysis map;
 - (d) Zoning district boundaries;
 - (e) Recorded easements abutting the tract; and
 - (f) Public facilities or property, such as conservation or recreation land, footpaths, bicycle paths, or streets.
 - (2) Site analysis map.
 - (a) Site analysis map, to be prepared by a landscape architect, showing:
 - [1] Existing contours at two-foot intervals;
 - [2] Steep slopes, distinguished as follows:
 - [a] Slopes greater than 15% but less than 25%;
 - [b] Slopes greater than 25% but less than 40%; and
 - [c] Slopes greater than 40%;

- [3] Mature trees, distinguishing deciduous from evergreen, and differentiating between them by size as follows:
 - [a] Trees with a diameter at breast height (DBH) between 6 and 12 inches
 - [b] Trees with DBH between 12 inches and 18 inches;
 - [c] Trees with a DBH between 18 inches and 32 inches; and
 - [d] Trees with a DBH greater than 32 inches;
 - [4] A note containing the number and total DBH of all trees with a DBH greater than 6 inches;
 - [5] Location and results of any soil, percolation and water table tests;
 - [6] Areas within the tract subject to easements, rights-of-way, or similar deed restrictions;
 - [7] If applicable, a wetlands delineation, prepared by a professional wetlands specialist, identifying:
 - [a] The wetland boundaries,
 - [b] The 25' buffer boundary,
 - [c] The 50' buffer boundary, and
 - [d] The 100' or 200' jurisdictional line;
 - [8] Habitats of rare and endangered species;
 - [9] Fences, stone walls, trails and rock outcroppings;
 - [10] Existing vegetation, including open fields, and unique specimens of vegetation; and
 - [11] Areas of visual impact, including viewscales into and out from the site.
- (b) Information on topography, slopes and trees required above may be omitted within areas of the site that are not proposed to be disturbed, if these areas are clearly marked on the plan as areas not to be disturbed.
- (3) Property Rights and Dimensional Standards Plan. A plan based on an instrument field survey conducted by a land surveyor, showing:
- (a) The location of existing easements or other property rights affecting the development;
 - (b) The location of any sections of the land to which the Town would be granted property rights, either by easement or transfer of ownership, for street, utility, conservation, recreation or other public purposes;
 - (c) The proposed division or merger of the property into lots and parcels in private ownership;

- (d) The proposed yard setback in feet for buildings and, if applicable, from a zoning district boundary and, if applicable, the setback of a driveway or parking lot from lot lines;
 - (e) The proposed boundaries of any common open space;
 - (f) Proposed bounds, markers, or monuments;
 - (g) If applicable, zoning district boundary lines and the Town boundary line;
- (4) Site construction plan, prepared by a landscape architect and a civil engineer, showing in a general manner, where applicable:
 - (a) The location of existing and proposed buildings;
 - (b) Existing and proposed contours;
 - (c) If applicable, a delineation of vegetated wetlands, with the buffers described in (2)(a)(7) above;
 - (d) The proposed location and dimensions of streets, drives, parking areas, curb cuts, streetlights, and driveway aprons;
 - (e) The proposed drainage system in general;
 - (f) The proposed landscaping in general;
 - (g) A proposed limit-of-work line outside of which no land or natural features will be disturbed; and
 - (h) A note indicating amounts of earth material that is anticipated to be removed, added, or reused on site.
- (5) Street layout and profile plans, prepared by a civil engineer, with each street shown on a separate sheet and consisting of a street layout plan and a street profile plan matching the street layout plan, as follows:
 - (a) Street layout plans that show the layout of each proposed street within the development and beyond it to the limit of the proposed construction necessary to provide adequate access and connection to municipal services:
 - [1] The length of each straight segment to the nearest one hundredth of a foot and the bearing of them to the nearest five seconds;
 - [2] The length, central angle, radius and length of tangent for each curved segment to the same degree of precision as the straight lines and clearly identifying each non-tangent curve;
 - [3] All existing and proposed construction features, such as pavement, walks, curbs or berms, drains, catch basins, manholes, sewers, water mains, other underground conduits where known, retaining walls, traffic islands, grass plots, and gutters;
 - [4] Center-line stations designated at one-hundred-foot intervals at or opposite points of tangency;

- [5] Angles in the street line, manholes, catch basins and culverts; and
 - [6] Sight lines for entering and merging traffic at street intersections and driveway intersections and other necessary data pertaining to traffic safety;
- (b) Street profile plans that match the street layout plans and are located either above or below them for ease in locating corresponding points:
 - [1] The existing side lines and existing and proposed center lines with elevations every 50 feet and at all high and low points;
 - [2] The grade of the principal segments of the proposed street, showing the location of vertical curves and corresponding data;
 - [3] All proposed sewers, drains, catch basins, manholes, cleanouts, siphons and other appurtenances identifying the material, class or strength and size of sewers and drains and the grade for each section of them in percent; and
 - [4] The centerline stations and invert elevations of all catch basins, manholes, cross drains or culverts.
- (6) Utilities plan, to be prepared by a civil engineer, showing:
 - (a) The location and size of existing water mains, fire hydrants, sanitary sewers, and storm drains; and
 - (b) The proposed location and size of utilities to be constructed on the site and their proposed connections to existing utilities, and any special features, such as culverts or pumping stations, that might affect the ability of the Town to service the development.
- (7) Landscape plan, prepared by a landscape architect, showing:
 - (a) Existing and proposed grades,
 - (b) The existing vegetative cover to be retained,
 - (c) Existing trees with a 6-inch DBH or greater, identified as:
 - [1] Trees to be retained
 - [2] Trees to be removed, and
 - [3] Trees to be transplanted;
 - (d) Existing and proposed stone walls
 - (e) Proposed building footprints, walls, fences, parking spaces, loading bays, driveways, walks, storage areas, rights-of-way, easements, and location of structures on, and the uses of, abutting properties;
 - (f) A plan and plant schedule giving botanical and common names of plants to be used, size at time of planting, mature size, rate of growth, quantity of each, location and method of any excavation and soil preparation, and the spacing and location of all proposed trees, shrubs and ground covers;

- (g) Proposed street furniture, such as regulatory and informational signs, benches, hydrants, street lighting standards, postal boxes, transformer pads and the like; and

D. INFORMATION REQUIRED. The following information must be included in the application:

- (1) Hydrologic and drainage analysis. Hydrologic and drainage analysis prepared by a civil engineer, documenting compliance with §175-7.5, Stormwater Management, of these Regulations;
- (2) Soil surveys, test pits, and test borings. Test pits and test borings prepared by a civil engineer, taken at one-hundred-foot intervals at the proposed station points as described in the street layout and profile plans and at the proposed location of any infiltration structures, or at such other points as the Town Engineer may request;
- (3) Deed or easement. Drafts of any deed, easement, covenant, or restriction to be offered to the Town;
- (4) Site development conditions. Proposed conditions limiting parts of the site, maintaining or enhancing existing natural features, making site improvements or landscaping, or accepting or assigning responsibility for maintenance;
- (5) Off-site improvements. Proposals for mitigating measures or the design or construction of off-site improvements (or financial contributions for them) to deal with the impacts of the proposed development;
- (6) The methods for protecting plant materials during and after construction;
- (7) A written list of all waivers, if any are requested, from these Regulations;
- (8) If a preliminary subdivision plan was previously filed, a written response to the Board's comments and recommendations in its decision;
- (9) If applicable, copies of agreements granting the applicant rights essential to development of the land and construction work involved, including the right of access over existing ways;
- (10) Easements. Draft language for both proposed permanent and temporary easements;
- (11) Maintenance by Owners. Draft documents providing for the operation and maintenance of landscaping, streets, and utilities by the property owners, including:
 - (a) an Operation and Maintenance Plan prepared by an Engineer which identifies necessary maintenance and inspection tasks both during and after construction to maintain the proper and safe operation of the drainage system. The Board may require that:
 - [1] Inspections be performed after accumulation of specific depths of sediment, after major storm events and at regularly established time intervals;
 - [2] Certain technical inspections be performed by an Engineer;

- [3] Inspections or maintenance be performed at specific times of the year when they are expected to be most effective;
 - [4] A description of maintenance and the results of inspections be reported to the Planning Department;
- (b) An agreement allocating the responsibility for and costs of maintenance among the owners;
- (12) Phasing. A document describing:
 - (a) The methods to be used during construction to control erosion and sedimentation through use of sediment basins, mulching, matting, temporary vegetation, or covering of soil stockpiles;
 - (b) The approximate size and location of portion of the parcel to be cleared at any given time and length of time of exposure; and
 - (c) The phased construction, if any, of any required public improvements, and how such improvements are to be integrated into subdivision development;
- (13) Copies of all reports, applications for permits, etc., or permits issued, and all amendments to them, which are relevant to the decision which the Board must make, which have been filed by the applicant with all federal, state and local agencies, and all responses from these agencies.

6.2. Decision

- A. **SCOPE OF DECISION.** The Board must file a written decision with the Town Clerk approving, approving subject to conditions, or disapproving the definitive subdivision plan. If the application is disapproved, the Board must state in detail where the plan does not follow these Regulations or the recommendations of the Board of Health.
- B. **APPROVAL CRITERIA.** An application for approval of a definitive subdivision plan will be approved if it meets all of the following criteria:
 - (1) The submittal complies with these Regulations and with the applicable provisions of the Zoning Bylaw;
 - (2) The application follows the procedural requirements of these Regulations;
 - (3) The plan meets the standards for site design set forth in §175-7.0 of these regulations; and
 - (4) The Board of Health has approved the plan, and a favorable recommendation sent to the Board, or 45 days from the date of filing with the Board of Health has elapsed without a recommendation being sent to the Board.
- C. **TIME FOR DECISION.** The Board's decision must be filed with the Town Clerk within 90 days of the filing for a definitive plan for which a preliminary subdivision plan has been filed, and within 135 days for a definitive plan for which no preliminary subdivision plan has been filed. These deadlines may be extended by mutual agreement between the applicant and Board.

- D. **BOARD FAILURE TO ACT.** If the Board fails to act upon an application, or fails to notify the Town Clerk of its action, within the required time, or within the time as may be extended, the plan must be deemed to be approved.
- E. **APPEAL OF DECISION TO COURT.** The applicant, any municipal officer or board, or any person aggrieved by the decision of the Board, or by the failure of the Board to take final action within the time prescribed herein, may appeal to the Superior Court of Middlesex County or the Land Court. Such appeal must be entered within 20 days after the Board's decision is filed with the Town Clerk or within 20 days after the expiration of the time prescribed herein if the Board has failed to take final action.

6.3. Mandatory Conditions

The Board must include the conditions set forth below in any approval of a definitive plan.

- A. **FAILURE TO OBTAIN ENDORSEMENT.** The applicant must obtain the endorsement of the Board within 180 days of the date of approval. Failure to do so may result in the rescission of the approval.
- B. **FAILURE TO COMPLETE CONSTRUCTION.** The applicant must complete the construction of all ways and services within two years of the date of endorsement of the Definitive Plan. Failure to do so may result in the rescission of the approval of such plan, unless the Board extends said period, for good cause shown, after the written request of the applicant not less than 30 days before the expiration of said period.
- C. **CONSTRUCT STREETS AND ALL REQUIRED UTILITIES.** As a condition of approval of a subdivision, the applicant agrees to construct streets and complete all other work specified on the Definitive Plan or required under these Regulations, meet all relevant provisions of the Zoning Bylaw and other bylaws, including installation of required utilities in such subdivision, and all work incidental to them, such as grading of lots to provide drainage, construction of retaining walls and other details or as specifically required by the Board.
- D. **PERPETUAL RIGHTS AND EASEMENTS.**
 - (1) As a condition of approval of a subdivision, the owner must grant to the Town a right and easement to construct, repair, replace, extended, operate, use and forever maintain all water mains, sewer mains, and all surface and subsurface storm water drains in, through or under the streets and easements as indicated on the Definitive Plan.
 - (2) In consideration of being allowed to connect to public street system and to enable the Town to protect public health and safety, the owner must grant the Town the perpetual right or easement to pass and repass over the streets and easements in the subdivision, and to use, operate, inspect, repair, renew, replace, and forever maintain the streets, street signs, and all appurtenances or components of them, in all of the subdivision and outside it if installed to serve the subdivision. To accomplish this, the owner must retain and reserve the necessary rights and easements in any conveyances or mortgaging of land or lots and in recording of plans and easements.

- (3) The owners must grant the Town the right to enforce on-street parking regulations within the subdivision and on any streets connecting the subdivision to the public street system. For projects that include minor streets, an instrument prohibiting parking and granting the Town enforcement rights will be required.
- E. POST-CONSTRUCTION RESPONSIBILITIES OF OWNERS. Notwithstanding the provisions of §175-6.3D, it is the responsibility of the owners and owners' successors in title to all or any portion of the subdivision to maintain the landscaping, streets and utilities within the subdivision until formally accepted by the Town. The owner must provide a supplemental covenant agreeing to maintain the streets and utilities, including snow removal, and permitting the Town to maintain them if necessary at the expense of the owners.

6.4. Recording of Definitive Plans

- A. PLAN. If no notice of appeal has been filed with the Town Clerk, or if an appeal has been taken and disposed of in a way which leaves the definitive plan approved and the Town Clerk has endorsed the Plan to that effect, any required modifications have been made or referred to on the plan, together with any conditions of approval, and the agreed-upon security has been accepted by the Board, the Board must endorse its approval on the plan, including the dates of approval and of endorsement, and return the plan originals to the applicant. The applicant must record the original Property Rights and Dimensional Standards Plan and Street layout and profile plans in the Registry of Deeds or file the Property Rights and Dimensional Standards Plan in the Land Court, as appropriate, within 180 days of the date of approval. The applicant must inform the Board in writing of the date and book and page or document number of recording.
- B. CERTIFICATE OF ACTION. The certificate of action and any easements and covenants must be recorded at the same time as the plans.
- C. SUPPLEMENTAL COVENANT. The Board may require, before the endorsement of the Definitive Plan, a supplemental covenant containing those conditions of approval that are intended to survive the release of the Statutory Covenant. The Board's Legal Counsel must approve such covenant as to form. Such covenant must be executed and duly recorded by the owners of record, and must run with the land. The covenant must be referenced on the Definitive Plan before recordation in the Registry of Deeds. The applicant must promptly, after recording, send a copy of the covenant, showing book and page number, to the Board.

6.5. Security

- A. SECURITY FOR CONSTRUCTION OF WAYS AND IMPROVEMENTS REQUIRED. The Board must not endorse its approval on the plans until security for the construction of ways and the installation of the required municipal services and other improvements to serve the subdivision has been provided. One of the methods in this section must be selected, but may be varied from time to time by the applicant, so that different parts of the subdivision may be secured by different methods, as long as the entire subdivision is secured by one method or another.

B. BOND OR SURETY. The applicant may give a bond, bankbook, or other readily negotiable security in the amount estimated by the Board to fully cover the cost, including inflation and contingencies, of constructing the ways and installing the municipal services or utilities to serve the lots enumerated in such bond or in a separate agreement referring to such bond. Such bond or security if filed or deposited must be approved as to form by the Board's Legal Counsel and as to sureties by the Town Treasurer. Such bond or security must be contingent on the completion of such improvements not later than three years from the date of the endorsement of the definitive plan. Failure to so complete will result in the automatic rescission of the approval of the Definitive Plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant before the expiration of said period. Upon satisfactory performance of all required work, the bond or other security may be released by vote of the Board and returned to the applicant. Upon failure to satisfactorily complete the work within the time specified, or within such further time as the Board may grant, the Board must have the right to enforce said bond or realize upon other security to the extent necessary to complete the work to the satisfaction of the Board. In accordance with MGL c. 41 s. 81U, the Board may expend the proceeds of such bond or deposit not exceeding \$25,000 without specific appropriation by the Town, provided the Board of Selectmen approves the expenditure. At the anniversary date of posting of bond or other security and when circumstances otherwise calls for such action, the Town may verify that the security is still in force and effect, and that the surety or financial institution is solvent and capable of paying the required amount.

(1) Amount. In determining the amount of the bond or surety, the Board will be informed by the following formula in setting the sum of the security:

- (a) The applicant's estimate of the cost to complete the work; plus
- (b) A ten percent contingency; plus
- (c) Cost increases due to inflation over a five year period; plus
- (d) Costs associated with as-builts and street acceptance plans.

(2) Required Terms. All performance bonds must contain the following provision:

If the Principal fully and satisfactorily observes and performs per the qualifications and time schedule set forth here specified all the covenants, agreements, terms, and provisions in the following:

- (a) The application for definitive plan approval;
- (b) The Subdivision Control Law and the rules and regulations of the Planning Board which govern this subdivision;
- (c) The Decision of the Planning Board dated _____ and attached to this as Exhibit A; and
- (d) The definitive plan, as approved by the Planning Board in the Decision;

Then this obligation is void; otherwise, it remains in full force and effect and the sum must be paid to the Town of Lexington as liquidated damages.

- (3) The penal sum of the bond or the amount of other security may be reduced from time to time by the Board upon request of the developer upon partial performance of the required improvements.
- C. CONSTRUCTION MORTGAGE AGREEMENT. The applicant and the lending institution which provides a construction loan for the subdivision may enter into an agreement with the Board, whereby the lender must at all times retain a portion of the loan adequate to cover the cost of all outstanding work of construction of ways and installation of municipal services or other required improvements, and release portions of the amount so retained upon certification by the Board that the corresponding portion of the required work has been satisfactorily completed. Upon failure of the applicant to perform the required work within the agreed-upon period, the lender must make so much of the retained money as may be necessary to complete the required work available to the Board. Upon satisfactory completion of all required work, the applicant may request the release of the agreement and proceed in the same manner as under §175-6.6.
- D. STATUTORY COVENANT. Before the endorsement of the Definitive Plan, the applicant may elect to submit a covenant for review by the Board stating that no lot in the subdivision may be sold and no building may be erected thereon until the improvements specified in the decision and on the Definitive Plan are constructed and installed so as to adequately serve said lot or lots. The Board's Legal Counsel must approve such covenant as to form. Such covenant must be executed and duly recorded by the owners of record, and must run with the land. Such covenant must state that the improvements shown on the definitive plan must be completed no later than three years from the date of the endorsement of the Definitive Plan. Failure to so complete the improvements may result in the rescission of the approval of the Definitive Plan by the Board, unless the Board extends said period, for good cause shown, after the written request of the applicant no less than thirty (30) days before the expiration of said period. The covenant must be referenced on the Definitive Plan before recordation in the Registry of Deeds. The applicant must promptly, after recording, send a copy of the covenant, showing book and page number, to the Board.
- E. CONVERTING COVENANT TO ANOTHER PERFORMANCE GUARANTEE. If the applicant desires that lots be released from a covenant and that the improvements remaining to be constructed or installed be secured by another form of performance guarantee, a formal written request must be sent to the Board by registered mail, which sets forth and include:
- (1) Extent. The extent and scope of remaining work to be completed to satisfy the requirements for the construction or installation of all required ways and municipal services.
 - (2) Estimate. An estimate, under these Regulations, which reflects all remaining costs related to the construction of all required ways and installation of all required municipal services.
 - (3) Form and Type. The form and type of guarantee being given to the Board to secure all remaining improvements.

- (4) Board Action. The Board or its agent will make a determination as to the sufficiency of the submitted estimate, and, if such estimate is accepted, a new performance guarantee will be given to the Board. Upon acceptance by the Board of the new performance guarantee, all applicable lots must be released from the covenant.
- F. CONVERTING BOND, DEPOSIT, OR AGREEMENT TO COVENANT. If the applicant desires to secure by means of a covenant the construction of ways and the installation of municipal services in a portion of a subdivision for which no building permits have been granted nor any lots have been sold, and to have the Board release the bond, deposit of money or negotiable security, or agreement and mortgage previously furnished to secure such construction and installation, the applicant must submit to the Board a reproducible tracing and three (3) contact prints of the reproducible tracing of the Definitive Plan, limited to that part of the plan which is to be subject to such covenant. Upon approval of the covenant by the Board, reference to them must be inscribed on such section of the plan, and it must be endorsed by the Board and recorded with the covenant at the expense of the applicant. Certified copies of all documents that the applicant records at the Registry of Deeds must be provided to the Board as in these Regulations.

6.6. Release of Security

- A. GENERAL. Upon completion of required improvements, security for the performance of which was given by the bond, deposit, or covenant, or upon the performance of any covenant with respect to any lot, the applicant, at his expense, must send by Registered or Certified Mail to the Town Clerk and the Board a written statement that the said construction or installation which has been secured in connection with such bond, deposit, covenant or agreement, has been completed per the requirements contained within these Regulations. Such statement must contain:
- (1) Name and address of applicant.
 - (2) A Compliance Certificate signed by the applicant and signed and sealed by his Engineer stating that the development has been completed according to the Rules and Regulations of the Planning Board and the Bylaws of the Town of Lexington.
 - (3) Copies of or reference to the requisite number of Inspection Forms and Reports.
 - (4) An As-built Plan (see below).
 - (5) A written certification by the Board's engineer that construction of all ways and sidewalks, installation of monuments, street signs, pavement, lighting, gutters and curbs, required grading and drainage, water mains, hydrants and appurtenances, all sewer mains and appurtenances and planting and seeding has been completed per the Definitive Plan.
 - (6) A written certification by the Board of Health that the installation of sewage disposal facilities, if applicable, and provisions for surface drainage of all lots has been performed per the Definitive Plan and the requirements of the Board of Health.

- (7) Copies of or reference to the necessary instruments, executed by the applicant, transferring to the Town all utilities and easements as shown on the Definitive Plan (see below).
- B. REFUSAL. If the Board determines that said construction or installation has not been completed, it must specify to the Town Clerk and to the applicant, in writing by Registered or Certified mail, return receipt requested, the details wherein said construction and installation must have failed to follow the requirements contained within these Regulations.
- C. CONSTRUCTIVE RELEASE. Upon failure of the Board to act on such application within forty-five (45) days after receipt of them by the Town Clerk and the Board, all obligations under the bond must cease and terminate by operation of law, and any deposit must be returned and any covenant must become void. If that said forty-five (45) day period expires without such specification, or without the return of the deposit or release of the covenant as previously mentioned, the Town Clerk must issue a certificate to such effect, duly acknowledged, which may be recorded.
- D. AS-BUILT PLANS. The following as-built plans and profiles, prepared by an Engineer or Land Surveyor, based on an on-the-ground survey done within six weeks of submittal, must be submitted to the Board following the completion of construction and, in addition, at such time during the course of construction as required by the Director of Public Works. These may be new plans or full size prints of the approved definitive plans showing in red or other clearly distinguishable color all differences between the approved and the actual construction. Where the departures are considered significant, the Board may require corrective work or may require engineering calculations to substantiate acceptability of work as done. All submitted material must also be supplied in digital form, as described in 3.3.E(4).
- (1) A street layout plan, drawn in ink on linen, at a scale of 1"=40', in form approved by the Board's engineer as suitable for submission to the Town Meeting for street acceptance for purposes and for filing in the Registry of Deeds.
 - (2) A plan and profile, drawn in ink on linen, or prepared on another suitable, permanent reproducible material, at a scale of 1"=40', detailing street locations, house locations, if any, and grades and the location and elevation of all underground utilities and appurtenances, including rim grades, percent of slope for sewer and drain lines, and contours, of two foot (2') intervals, for a distance of forty feet (40') from the sideline of any street layout, utility easement, the boundaries of any resource protection zoning district, and the boundary of any area which the Conservation Commission has previously determined to be subject to MGL c. 131 s. 40, "as built."
 - (3) The Engineer must obtain, from actual field survey and other sources as may be necessary, such information as is necessary to properly identify any "as built" locations of all underground utilities.

6.7. Amendment, Modification, or Rescission

- A. GENERAL. Under MGL c. 41, s. 81W, the Board may, upon its own motion or upon the request of any person interested, amend, modify or rescind the approval of a Definitive Plan. Failure to follow these Regulations or the specifications and conditions in the approval of the Definitive Plan may constitute a basis for such action by the Board. Such action may include the utilizing any security posted by the applicant, the rescission of subdivision approval and all other measures provided by law.
- B. PROCEDURE. The procedure for the amendment, modification, or rescission of a Definitive Plan, under MGL c. 41, s. 81W, must conform to the requirements, to the maximum extent practicable, for approval of an original Definitive Plan as set forth here.
- C. EFFECT. The amendment, modification, or rescission of a Definitive Plan may not affect lots sold or mortgaged by the applicant per MGL c. 41, s. 81W.

§ 175-7.0 REQUIRED IMPROVEMENTS AND DESIGN STANDARDS

7.1. Site Design

A. SITE DESIGN OBJECTIVES.

- (1) Design objectives. Proposed developments must be located to preserve and enhance the natural features of the site, including tree canopy, to avoid disturbance of environmentally sensitive areas, to minimize adverse impacts of development on adjoining properties, to minimize the alteration of the natural features of the site and to preserve and enhance scenic points, historic buildings and places and similar community assets which add value and attractiveness to the subdivision and the Town.
- (2) Residential development. The construction of streets and municipal facilities and of dwellings in a residential development must consider topography, natural features and drainage and must promote privacy for residents, adequate solar access, tree canopy, planting and other natural elements and consistency with the overall aesthetic appearance of the development.
- (3) Commercial development. The construction of streets and municipal facilities and of buildings in a commercial development must consider topography, natural features and drainage and must reduce the impacts of noise, odor, glare and the scale of development on adjoining properties.
- (4) Unsuitable land. Land that the Board determines to be unsuitable for development due to flooding, improper or adverse drainage, adverse topography, poor soils, bedrock, location of utility easements or other features that the Board determines may be harmful to the safety, health, convenience and general welfare of the present or future inhabitants of the subdivision and or its surrounding area must not be subdivided or developed unless adequate measures are planned by the applicant and approved by the Board to eliminate any short-term or long-term impacts created by development of the unsuitable land.

B. LOTS; PROPERTY RIGHTS.

- (1) Compliance with Zoning Bylaw. All lots shown on the plan must meet the frontage, area, shape, and access requirements of the Zoning Bylaw.
- (2) Relationship of lot to street. Every lot must have adequate access for pedestrians, automobiles, emergency vehicles such as fire-fighting apparatus and ambulances, and larger vehicles such as delivery trucks.
- (3) Lot arrangement. Lots must be arranged so that there will be no foreseeable difficulties in securing building permits to build on all lots due to lack of compliance with the Zoning Bylaw; because of topography, soils, bedrock, improper drainage or other conditions; or in providing practical, workable access to buildings on each lot.

- (4) Easements.
 - (a) Easements for utilities and bicycle and pedestrian paths, where necessary, must be at least 20 feet wide.
 - (b) When a subdivision is traversed by a watercourse, drainage way, channel or stream, or has a stormwater storage facility, the Board may require an easement of adequate width to conform substantially to the lines of the feature and to offer for the possibility of flooding, protection of banks and adjacent properties, construction or future maintenance and other necessary purposes.
 - (c) Slope easements must be offered where necessary to ensure lateral support and protection of streets and other construction features.
 - (d) No section of a street, pedestrian path, bicycle path, water system, sanitary sewerage system, storm drainage system or other utility system may be approved if it requires a connection over land of other owners, unless appropriate easements are first obtained.
- (5) Subdivision straddling municipal boundaries. Whenever access to the subdivision or any lot in it is required across land in another town or city, the Board may require documentation that access for the intended use has been legally established in that town or city as a public street or as part of an approved subdivision in accordance with local zoning. In general, lot lines should be laid out so as not to cross municipal boundaries.
- (6) Self-imposed restrictions. If, as part of a subdivision application, the applicant or owner places voluntary restrictions on any of the land contained in the subdivision that are greater than the requirements of these Regulations or Zoning Bylaw, such restrictions or references to them must be shown on the definitive plan and recorded in the Registry of Deeds.
- (7) Bounds.
 - (a) Permanent reference bounds for surveying must be set:
 - [1] Along each right-of-way line at all intersections, angle points, points of change in direction or curvature of streets, and at the two corners of each lot that abuts the right-of-way; and
 - [2] Along each line of any easement at angle points, points of change in direction or curvature.
 - (b) If a permanent bound is set on a long straight line, bounds must be set so that each is visible, or not more than 500 feet, from the next bound in each direction.
 - (c) Permanent bounds must be of granite or reinforced concrete six inches square and three feet long with a one-inch deep one-half-inch diameter drill hole in the top. Permanent bounds must be set in bank run gravel and must be set flush with the surface of the ground per the Standard Specifications. Where the soil makes the setting of permanent bounds impractical, alternate types of permanent

monumentation may be used with the prior approval of the Town Engineer.

- (8) **Markers.** In addition to locations where permanent bounds are required, a permanent reference marker for surveying must be set along each lot line at angle points, points of change in direction or curvature. Permanent markers must be metal pipes or pins at least 24 inches in length and must be imbedded in the ground so that they are not easily removed or shifted from the point they mark.

C. GENERAL CONSTRUCTION REQUIREMENTS.

- (1) **Construction specifications.** If the subdivision plan proposes construction for which standards or specifications are not given by these Regulations, the Board's Development Regulations, or the Town's Standard Specifications, the Massachusetts Highway Department Standard Specification for Highways and Bridges, latest edition, will apply. If a difference between the Town's Standard Specifications and the Massachusetts Highway Department Standard Specification for Highways and Bridges, the Town Engineer must determine which standard or specification will apply.
- (2) **Reimbursement for extra construction.** The Board may require an applicant to install municipal services and construct ways of greater width or size than the requirements for the subdivision alone with the added cost to be reimbursed by the Town. Under no circumstances will a developer be reimbursed for the construction of a street with a pavement less than 33 feet wide, nor will a reimbursement be made for extending streets and utilities to the subdivision's boundaries.
- (3) **Improvements across entire frontage.** The improvements required by these Regulations must be constructed across the entire frontage of any lot the subdivision of which is approved by the Board.
- (4) **Accessibility.** All proposed improvements must comply with MGL c. 22 s. 13A and all regulations adopted under it.

7.2. Streets and rights-of-way

A. COMPLETE STREETS DESIGN OBJECTIVES. All subdivision street plans and designs must provide appropriate accommodations for all transportation system users including pedestrians, cyclists, transit users, and motorists. Complete streets are designed and operated to enable safe access for users of all ages and abilities. Street designs should be developed in a context sensitive manner in which consideration is given to the surrounding physical environment, land uses, as well as the location of existing and other planned infrastructure to support a multi-mode transportation network.

- (1) **General objectives.** The subdivision street system must be designed to:
 - (a) Permit the safe, efficient and orderly movement of motor vehicles, pedestrians and bicycles;
 - (b) Meet, but not exceed, the needs of the present and projected future population to be served;

- (c) Offer easy and prompt access by emergency vehicles, such as fire, police and ambulance vehicles, and to permit effective delivery of Town services, such as snow removal, school bus, and refuse removal services;
 - (d) Contribute to a safe and efficient Town-wide system of movement of motor vehicles, pedestrians and bicycles;
 - (e) Promote connections for pedestrians, bicycles, and motor vehicles between adjacent neighborhoods and more direct access to public facilities, such as schools, recreation areas and open space;
 - (f) Provide alternatives to the Town's few arterial streets to connect adjacent neighborhoods;
 - (g) Promote public transportation and increased pedestrian and bicycle accommodations in order to reduce vehicular congestion and environmental pollution;
 - (h) Minimize the long-term costs for maintenance and repair of streets;
 - (i) Enhance the appearance of the subdivision and the Town by achieving a visually attractive streetscape.
- (2) Residential subdivisions. In addition, the street system in a residential subdivision must be designed to:
- (a) Discourage use of streets in residential neighborhoods by through traffic that originates or has a destination:
 - [1] Outside of the Town;
 - [2] In a commercial area;
 - [3] In residential neighborhoods in the Town that are a mile or more away;
 - (b) Protect the residential character of the development by encouraging safe-speed travel within the subdivision and reducing noise and fumes;
 - (c) Promote safe travel by bicycles and pedestrians and, where possible, offer facilities for them separated from automobiles.
- (3) Commercial subdivisions. In addition, the street system in a commercial subdivision must be designed to:
- (a) Encourage carpooling, van services and public transportation and a reduction in single-occupant automobiles;
 - (b) Reduce congestion on nearby streets and preserve adequate transportation capacity at affected intersections and street segments.
- B. LAYOUT AND ALIGNMENT OF THE STREET SYSTEM.**
- (1) Connection to a public street.
- (a) Each street within a subdivision must connect to and be accessible from the public street system either directly or via some combination of:

- [1] Streets approved as part of another definitive subdivision plan which have either been constructed in accordance with that plan or for which adequate surety exists to guarantee satisfactory completion of the street;
 - [2] Streets other than those above which are built to the same design standards as new subdivision streets constructed in compliance with the these Regulations; or
 - [3] One or more other streets in the subdivision.
- (b) In order to meet these requirements, the applicant may improve existing streets at its own expense. The Board may not approve a subdivision plan that requires improvement of a street if a competent legal opinion is presented that the applicant does not have the necessary rights to make such improvements unless the Town Counsel provides an opinion that any potential legal impediments to such construction have been removed.
- (2) Streets continuous. Where there is more than one street within a subdivision, streets must be connected into one continuous system.
- (3) Intersections.
- (a) Streets must be laid out to intersect as nearly as possible at right angles, and in no case at less than a 75-degree or more than a 105-degree angle.
 - (b) New subdivision streets may be constructed at an intersection of two existing streets if the proposed subdivision street is aligned opposite one of the existing streets.
 - (c) An intersection of two streets may not be within 125 feet of any other existing or proposed intersection as measured between the points of intersection of the centerlines of the intersecting streets.

C. EXTENSION TO ADJOINING LAND.

- (1) Easement reserved for extension to adjoining land. When the Board determines that land adjoining the subdivision can be developed, the subdivision plan must allow for the future extension of streets and other public facilities to the adjoining land. The subdivision plan must reserve an easement to the adjoining land for the future extension of the street and other public facilities.
- (2) Reserve strips prohibited. Where a way within the subdivision passes within 25 feet of an adjacent property, the subdivision plan must reserve an easement providing access from the way to the adjacent property.
- (3) Reconstruction of street if development of adjoining land occurs later. If the adjoining land is later developed, the developer of that land may extend the street and utilities to the adjoining land. Such construction must include the removal of any turnaround. Any land within the right-of-way that was part of the turnaround and is no longer needed for an extended right-of-way must be landscaped and deeded to the abutters.

- (4) Utility stubs extended.
 - (a) The Board may require the developer to construct stubs of utility lines and other underground services and facilities to the edge of the right-of-way so that future extension of the street and utilities can be made without digging trenches in the street.
 - (b) The Board may require the developer to construct a "wye" stub of newly constructed utility lines to the edge of the right-of-way of a street to serve lots that abut the street but are not in the subdivision so that those lots may connect to the Town system later without digging trenches in the street.

D. STREET CLASSIFICATION.

- (1) Compliance with classification system. The street type is defined by assessing the street's proposed role in the town's (and regional) transportation system, together with its surrounding built and natural environment. Lexington is generally suburban in character, with some parts appearing rural and some quite urban, which makes identifying the unique or project-specific contextual elements crucial to determining the appropriate design.

For the purposes of an application, the Board will determine the classification of each proposed street.
- (2) Classes. The street type reflects its degree of local access and regional connectivity as described below:
 - (a) Arterials: Arterials have a high to moderate degree of regional connectivity at a wide range of speeds with a low to moderate level of local access. Examples include Waltham Street and Massachusetts Avenue.
 - (b) Collectors: Collectors have moderate to low degree of regional connectivity, at a wide range of speeds, with a higher degree of local access than arterials. Grant Street, Hill Street, and Lincoln Street are examples of collectors.
 - (c) Local streets: Local streets have a low to no degree of regional connectivity, low speeds, and a high degree of local access.
 - (d) Minor streets: Minor streets are a subset of local streets that serve, directly or indirectly, less than 10 existing, proposed, or potential dwelling units. Minor streets are typically, but not always, dead end streets.
- (3) Street names. Street names must be different enough in sound and in spelling from other street names in Lexington so as not to cause confusion. A street that is planned as a continuation of an existing street must have the same name. The extension of a street to connect to another street with a different name must have the name of the longer street. The Board, after consultation with the Fire Chief and the Police Chief, will determine the name of the street.

- (4) Street name signs. Street signs must be erected on two-inch inside diameter posts at all street intersections per the Standard Specifications. A temporary street name sign with black letters four inches long on light background must be erected at the time work is started in that part of a subdivision at all points where permanent signs will be required. The developer must keep complete visibility of street name signs until they are replaced by permanent signs that follow the Town's specifications, at the developer's expense.

E. DESIGN STANDARDS FOR STREETS AND RIGHTS-OF-WAY.

- (1) Design standards for streets and rights-of-way. These standards draw from and rest upon several important street design resources. These standards are consistent with, and in the case of silence or conflict should be referred to those described in:
 - (a) The 2011 edition of *A Policy on Geometric Design of Highways and Streets*, by The American Association of State Highway and Transportation Officials (AASHTO);
 - (b) The 2006 edition of the Massachusetts Department of Transportation's *Project Development and Design Guide*; and
 - (c) The many related resources referenced in the above, especially those aimed at achieving flexibility around pedestrian and bicycle facilities,

The standards below are not an attempt to provide every detail needed to design a right of way, but highlight key elements where the Town wishes to provide specific guidance to create context sensitive right of ways.

| | <i>Minor</i> | <i>Local</i> | <i>Collector</i> |
|--|--------------|--------------|------------------|
| Design Speed (MPH) | 25 | 25 | 35 |
| ROW CROSS-SECTION ELEMENTS | | | |
| Sidewalks (Number) | 1 | 1 | 2 |
| Min. Width (feet) | 5 | 5 | 5 |
| Planting Strip | | | |
| Min. Width (feet) | 5 | 5 | 5 |
| Shoulders | | | |
| Width (feet) | 1 | 2 | 2 |
| Travel Lanes | 2 | 2 | 2 |
| Width (feet) | 9 | 10 | 11 |
| Min. Grade | 1% | 1% | 1% |
| Max. Grade | 8% | 8% | 6% |
| Max. Grade within 75' of Intersection | 2% | 2% | 1% |
| Other Design Elements/Criteria | | | |
| Min. Overall ROW Width (feet) | 40 | 50 | 60 |
| Min. Intersection Rounding Radius (feet) | 25 | 25 | 30 |

- (2) Arterial Design. Proposed subdivisions that require arterial-scale right of ways should refer to the design resources listed in E.(1) above.

- (3) Cross Slopes. The minimum cross slopes of the travel lanes is 3/8ths of inch per foot. The maximum cross slope of the planting strips is 3:1. The maximum cross slope for sidewalks is 1.5%.
- (4) Bicycle Accommodations. All proposed streets must make adequate provisions for cyclists. For minor and local streets, these accommodations are likely to be met by sharing the travel lane, without need for formal markings or signage. On collectors and arterials however, depending on the context, pavement markings or separate lanes may be required.
- (5) On-Street Parking. Due to their width, on-street parking is prohibited on minor streets. Local streets, by contrast, can informally accommodate parking on one side of the street. On-street parking on collectors and arterials should be designed carefully in consideration of other travel lanes uses, such as cyclists.
- (6) Changes in Direction. Any change in direction of right of way tangents must be connected by either a horizontal curve or an intersection.
- (7) Dead-end streets.
 - (a) A dead-end street may not be longer than 650 feet from the point of beginning following the centerline to the furthest point on the right-of-way line. The point of beginning of a dead end street or way or of a system of dead end streets or ways is the point of intersection of street centerlines with a street from which there are two or more distinct vehicular access routes to the general street network of the Town.
 - (b) A street sign stating "Dead End" or "Not a Through Way," satisfactory to the Town Engineer, must be installed.
 - (c) Dead-end Street Turnaround Design Standards. Every dead-end street must:
 - [1] Terminate with a 60-foot radius right-of-way line with a landscaped center island.
 - [2] The pavement must have an outside turning radius of at least 50 feet.
 - [3] The pavement must have an inside turning radius of at least 25 feet.
 - [4] Alternative plans must include an analysis and evaluation of fire apparatus maneuvers throughout the turnaround created by swept path analysis and turn simulation software.
- (8) Center line of street. The centerline of the paved section of the street must follow the centerline of the right-of-way.
- (9) Driveway aprons. Driveway aprons must be constructed to serve each lot, graded to offer unimpeded drainage in the gutter, and constructed to the same standards as the street to the actual driveway width but in no case less than eight feet, or greater than 20 feet, wide for the entire distance between the exterior right-of-way line and the paved section of the street.

(10) Curbs and gutters.

- (a) Curbing is required to offer for safety, stormwater management, and delineation and protection of the pavement edge and to prevent erosion. Except where specified below, a continuous, low profile, "Cape Cod" style berm of bituminous concrete must be provided as an integral part of each new street
- (b) Vertical granite curbing must be installed:
 - [1] At the back of catch basins that are at low points;
 - [2] On all sections of a street with a grade greater than 5%;
 - [3] At all corner roundings; and
 - [4] On all collector and arterial streets.
- (c) The design, dimensions and installation of all granite or bituminous curbing must follow the Standard Specifications to the satisfaction of the Town Engineer.

(11) Slopes and walls.

- (a) Wherever the grade of the approved street differs from the grade of the adjacent land or where otherwise necessary for public safety, in the area beyond the sidewalk or landscaped planting strip, the developer must erect retaining walls and guardrail fences or offer slopes no steeper than one foot vertical to three feet horizontal in fill and one foot vertical to two feet horizontal in cut to ensure proper protection and lateral support.
- (b) No retaining wall may have a height above finished grade greater than five feet. Where necessary, a series of retaining walls may be constructed in a terraced effect provided the horizontal distance between the outside face of one wall is at least four feet from that of the next wall.
- (c) Landscaping must be provided on slopes and on the terraces between retaining walls to reduce the visual impact of the construction. Such walls, fences, slopes and planting are subject to the Board's approval as to location, design and dimensions and must be constructed in a manner satisfactory to the Town Engineer.

(12) Sight Distance, Alignment, and Profile. To ensure proper sight distances, alignment and profile of proposed streets designers must use the methodology laid out in AASHTO's *A Policy on Geometric Design of Highways and Streets*, referenced above. The *Policy* describes in detail how to calculate stopping sight distances, decision sight distances, passing sight distances, and horizontal and vertical profile.

F. CONSTRUCTION OF STREETS.

- (1) Construction standards and procedures. The following construction and installation standards apply:
 - (a) The area between the right-of-way lines must be cleared and grubbed except for those trees intended to be preserved as street trees.

- (b) All excavation must conform to the lines and grades shown on the approved definitive subdivision plan. Where mucky soil, ledge or clay is encountered within the right-of-way, it must be removed entirely and, where necessary, replaced with ordinary borrow or other materials specified in Massachusetts Highway Department Standard Specifications for Highways and Bridges, latest edition. Where water is encountered, or is expected to be encountered within four feet of the finished grade of the street, subsurface drainage, of a design acceptable to the Town Engineer, must be constructed.
 - (c) Boulders or ledge must be removed to a depth of at least 24 inches below final grade when within the area to be paved. Extensive ledge areas may require installation of interceptor subdrains or perforated pipe. Where street and shoulder grades require more than two feet of cut or fill, retaining walls may be required along abutting property lines unless a suitable alternative is shown, such as an earth slope one foot vertical to two feet horizontal. In such cases, a slope easement of adequate width must be obtained.
 - (d) The paved section of a street must conform to the current version of the Town of Lexington's Standard Street Construction Details. All materials used in the construction of streets must conform to the Town's Standard Specifications or, when not covered by the Standard Specifications, by the Massachusetts Highway Department Standard Specifications for Highways and Bridges, latest edition.
- (2) Restoration of street. Whenever the construction of utilities, connection to existing services, or facilities requires opening a street at an intersection, the developer must reconstruct the existing pavement, as follows:
- (a) By cold-planing the entire width of the street to a depth of 1.5 inches, from the point of curvature of the curb rounding across the proposed subdivision street to the point of tangency of the opposite curb rounding; and
 - (b) Overlaying the cold-planed area with a one-and-one-half-inch finish course of bituminous concrete.

7.3. Walks and paths

A. SIDEWALKS.

- (1) Location. Sidewalks must be located within, and next to, the exterior line of the right-of-way. Sidewalks must be a uniform distance parallel to the paved section of the street and separated from it by a landscaped strip. However, in order to avoid mature trees in the proposed right of way that are to be preserved, applicants may deviate from this standard without the need for a waiver provided they remain within the right of way.
- (2) Alternative Locations. The applicant may propose, or the Board may require, that all or some of the walks be located within easements rather than within the right-of-way of the street. The width and construction of walks in easements must be the same as if within a street right-of-way.

- (3) Construction. Sidewalks construction must conform to the Town's Standard Specifications.

B. FOOTPATHS AND TRAILS.

- (1) Where required. The Board may require the construction of a footpath or trail to offer access to open space, recreational areas, streets, footpaths, trails, bicycle paths, or recreational paths located either within the subdivision or on adjoining land.
- (3) Objectives for footpaths and trails. Footpaths and trails should be individually tailored, in width and material, to take full advantage of the area's unique natural surroundings with attention to the following objectives and standards:
 - (a) Build for durability by:
 - [1] Finding the most stable, well-drained soils that can bear the weight of pedestrian traffic;
 - [2] Building boardwalks where the soil is wet or unstable; and
 - [3] Using a switchback plan on slopes to inhibit erosion.
 - (b) Minimize environmental impact by:
 - [1] Disturbing the environment surrounding the trail as little as possible;
 - [2] Leaving trees that will offer a natural check on the amount of undergrowth that will require maintenance;
 - [3] Designing for proper drainage;
 - [4] Harmonizing the trail with its environment; and
 - [5] Using natural construction materials, such as dirt, cobblestones, or wood, where appropriate.
 - (c) Offer privacy for adjacent landowners by one or more of the following:
 - [1] Constructing a berm, fence, or combination of both;
 - [2] Planting trees and shrubs; and
 - [3] Allowing the natural vegetation to reclaim the area if it will offer adequate protection.
- (5) Path Easements. Easements for footpaths or trails must be at least 10 feet wide.
- (6) Identification. A sign or identification for a footpath or trail must:
 - (a) Be placed at the entrance and junctions of trails; and
 - (b) Be coordinated with the color of the existing signage used in the conservation areas in Lexington;

C. BICYCLE PATH OR RECREATIONAL PATH.

- (1) The Board may require the construction of a bicycle path or recreational path:

- (a) To offer a connection to a Town bicycle path or recreational path located on adjoining land or streets; or
 - (b) Where the path would be part of an existing or proposed Town bicycle path or recreational path system or of bicycle path or recreational paths leading to a public school.
- (2) Construction. A bicycle path or recreational path must be at least 10 feet wide and constructed in accordance with the Town's Standard Specifications.

7.4. Utilities and underground facilities

A. STANDARDS FOR WATER AND SEWER SERVICE.

- (1) Construction requirements. All elements of the water and sanitary sewer service must be designed to comply with the Town's Water, Sewer and Drain Regulations and the Standard Specifications.
- (2) Connection to Town system. Water and sanitary sewer mains must connect to the municipal water supply and sanitary sewer systems, respectively.

B. WATER MAINS.

- (1) Objectives. Water mains, laterals, and appurtenances must be designed to offer adequate water service for the needs of residents and for fire suppression.
- (2) Looped water system. The water system must be designed to form a continuous loop with existing or proposed water mains.
- (3) Fire hydrants. Fire hydrants must be spaced not more than 500 feet apart. A copy of the plan showing fire hydrant locations must be submitted by the Board to the Fire Chief for his or her comments and recommendations.

C. SANITARY SEWERS.

- (1) Objectives. Sanitary sewers, including all appurtenances, must be designed to connect all lots in a subdivision to the municipal sewer system for treatment and disposal of sewage.

D. ELECTRIC POWER AND COMMUNICATION LINES.

- (1) Installation. All electric power lines and communication lines must be installed in underground conduits. Communication lines must include, but not be limited to, telephone, security alarm, and cable television. To ensure that future providers have access to the development, additional conduits must be provided.
- (2) Street lighting. The developer must show provisions for street lighting on a plan subject to the approval of the Town Engineer. The developer must install the conduit underground and construct the bases. Poles and streetlights may not be installed without the prior written approval of the Town Engineer.

7.5. Stormwater Management

- A. **OBJECTIVES.** Subdivisions must be developed to maximize stormwater recharge within the subdivision and to minimize direct overland runoff onto adjoining lots, streets, and watercourses.
- B. **HYDRAULIC CALCULATIONS.** Hydraulic calculations, prepared by an Engineer, must be submitted to substantiate all design features of any proposed drainage system. Computations for runoff must be made under standard engineering practice, acceptable to the Town Engineer, and the method of calculation must be noted.
- C. **CAPACITY.** Drainage systems must have adequate capacity to handle all stormwater runoff presently flowing through the subdivision, as well as to dispose of any additional runoff generated by the proposed development. Peak flows and runoff volume at each boundary of the subdivision must be no higher following development than before development for all storms up to and including a 100-year 24-hour storm.
- D. **ABOVEGROUND STORMWATER RETENTION AREAS; RELEASE RATE.**
 - (1) The combination of storage and design release rate for an aboveground stormwater retention area may not result in storage duration of greater than 72 hours. The maximum depth of stormwater retention areas is four feet.
 - (2) Each stormwater retention area must be provided with a method of emergency overflow for storms greater than the 100-year 24-hour storm.
- E. **ALTERATION OF DRAINAGE PATTERN.** Changes to existing patterns of drainage must not harm properties outside the subdivision.
- F. **DESIGN STANDARDS FOR STRUCTURED SYSTEM.** All elements of the drainage system must be designed to comply with the Town's Water, Sewer and Drain Regulations and the Standard Specifications.
- G. **DRAINAGE EASEMENTS.**
 - (1) Where it is necessary to carry drainage across lots within the subdivision, drainage easements must be provided, of such width and construction as will be adequate to accommodate the volume and velocity of the runoff. However, in no case may the easements be less than 20 feet wide.
 - (2) When a proposed drainage system will carry water across land outside the subdivision boundaries, appropriate drainage rights must be secured by the developer and must be referenced on the definitive plan.

7.6. Trees and landscaping

- A. **OBJECTIVES AND APPLICABILITY.**
 - (1) **Objectives.** The Board determines that:
 - (a) Trees and other plant materials planted within or along the right-of-way as part of a coordinated landscape plan improve the appearance and economic value of a subdivision;

- (b) A landscaped island in the center of a turnaround is better than a paved surface covering the entire island;
- (c) The owners of the lots that have frontage on the turnaround, individually and collectively, should support the landscaping in such islands, and the owners of other lots that have frontage on sections of the right-of-way within which landscaping is planted should support that landscaping;
- (d) Every effort must be made to preserve existing trees within the proposed right-of-way as well as within individual lots shown on the subdivision.

B. STREET TREES.

- (1) Location. Street trees must be planted, at the developer's expense, on each street within the tract being subdivided. Trees should be planted within the street right-of-way between the area designated for sidewalks and the side line of the street pavement and must be spaced between 35 to 50 feet apart on center.
- (2) Characteristics. Proposed street trees must meet the following standards:
 - (a) Proposed street trees must be of the applicable USDA Zone hardiness, licensed nursery stock with good root development and branching characteristics with a one-year warranty.
 - (b) No more than 50% of any one genus may be proposed.
 - (c) Proposed street tree species must be indigenous to the region. A list of tree species recommended can be found in the Town's *Tree Management Manual*.
 - (d) Be a minimum size of three inches in caliper, measured four feet from the ground level, and eight to 10 feet of height in place.
 - (e) Be planted in holes of a depth and width of two times the diameter of the root ball. Trees must be planted at their proper depth, in good quality topsoil, and securely staked.

C. CUL-DE-SAC PLANTINGS. The center island of a cul-de-sac must be landscaped.

D. RESTORATION OF SLOPES. All cut and fill slopes subject to erosion and adjoining the right-of-way must be planted with suitable well-rooted, low-growing plant materials as shown on the landscape plan. Plants or perennial grass must be suited to the adjoining landscape and located to offer adequate cover. The Board may require the planting of sod and other erosion control measures where called for.

7.7. Reservation of land for public purposes

A. DESIGNATION FOR RESERVATION. The Board may require the designation of one or more parts of the subdivision tract for reservation for three years for park, playground, open space or other municipal purposes. The reservation of land may not be unreasonable in relation to the size of the tract being subdivided and to the prospective uses of the reserved land.

- B. NOTATION ON PLAN. If the Board designates land for reservation for municipal purposes, a notation must be made on the definitive subdivision plan concerning the area being reserved and the requirement that no street, utilities, building, or other improvements within the boundaries of the land being reserved may be made for three years from the date of endorsement of the plan without the Board's prior written approval.
- C. ACTION BY TOWN WITHIN THREE YEARS. During the three-year reservation period, the Town may choose to buy any or all of the reserved land and must justly compensate the owner for the land acquired. If the Town does not choose to buy the land within the three-year reservation period, the developer may go ahead with improvements per the approved subdivision plan.

§ 175-8.0 CONSTRUCTION

8.1. Work Notification to Town Departments

- A. **PRECONSTRUCTION CONFERENCE.** Before the initiation of any work within the subdivision, there must be a preconstruction conference to be attended by the applicant and the Planning Department, at which time a work schedule, outlining all steps within the development process, must be submitted by the applicant. Following approval of the work schedule by the Planning Department, the applicant will be required to notify the Board, in writing, of any deviations from the proposed work schedule.
- B. **NOTIFICATION.** The Planning Department and Town Engineer must be separately notified, at least 48 hours (excluding Saturdays, Sundays, and legal holidays) before beginning any of the following work:
 - (1) Cutting of trees for street construction.
 - (2) Clearing and grubbing of a right of way.
 - (3) Installation of storm drainage facilities.
 - (4) Installation of water and sanitary sewer facilities.
 - (5) Placing of material for sub-base.
 - (6) Excavation for electric underground distribution system.
 - (7) Application of gravel in or above sub-base.
 - (8) Laying of Bituminous Concrete Bottom Course.
 - (9) Laying of Bituminous Concrete Top Course.
 - (10) Installation of curbing and curb inlets.
 - (11) Spreading of gravel in sidewalks.
 - (12) Laying Bituminous Concrete for sidewalks and aprons.
 - (13) Spreading of loam for grass plots.
 - (14) Grading of slopes.
 - (15) Construction of retaining walls.
 - (16) Setting of bounds.
- C. **ALLOCATION OF RISK.** If any of the above designated work is commenced without proper notification being given as specified, such work is performed at the risk of the applicant or owner; and the Town Engineer may order the removal of them at the expense of the applicant or owner. All inspections performed by the Town Engineer or her or his designee are at the expense of the applicant. Subdivision bonds will not be released until all such expenses have been paid to the Board.

8.2. Inspection

- A. **ACCESS.** To verify that the required improvements are constructed or installed in accordance with these Regulations and with the applicable technical standards,

the Board, its agents, and employees of the Town must be allowed access to the subdivision during normal working hours while it is under construction, subject to notice and compliance with safety standards.

- B. NOTICE. The applicant is responsible for ensuring that written notice is delivered to the Planning Department and the Town Engineer upon the completion of each of the tasks enumerated below and at least three working days before commencing the next task or covering the work performed. Work covered before expiration of three working days after such notice may be required to be uncovered or dug up or may be considered to have not been done per these Regulations.
- C. REQUIRED INSPECTIONS. Before the start of construction in a subdivision, the Board will designate either the Town Engineer, his or her designee, or another authorized Engineer to be responsible for periodic inspection of construction. The developer may not go ahead with construction of any of the following stages of development until the Town Engineer has given his written approval of the satisfactory completion of the earlier stage.
- (1) Clearing, grubbing, and excavation to firm sub-base;
 - (2) Filling and grading to rough grade, may include utility trenching;
 - (3) Bedding water, sewer, and drain pipes; installing manholes and catch basins, valves and appurtenances (no backfilling trenches);
 - (4) Backfilling trenches, rolling and compacting sub-base or surface;
 - (5) Installing select gravel or crushed stone base in 6" layers, rolling, and compacting to grade;
 - (6) Setting curbing, catch basin inlets and gratings, headwalls, retaining walls, other structural details;
 - (7) Laying any course of bituminous pavement;
 - (8) Loaming and seeding grass plots;
 - (9) Planting shade trees;
 - (10) Adjusting manhole and catch basin covers, valve covers, removing debris, leftover materials, correcting uneven spots, clean-up.
 - (11) Following completion of all improvements and the installation of bounds.

The Town Engineer may require inspection at such other intervals, as he or she may deem necessary to assure proper construction of the improvements. In addition, the Town Engineer may require periodic inspection reports from the developer's engineer.

D. STREET CONSTRUCTION

- (1) No pavement may be laid:
 - (a) After frost has penetrated the base more than one inch; or
 - (b) After the air temperature stays at or below freezing for more than a day; or

- (c) After the final day for paving set by the Town Engineer, whichever occurs first.
 - (2) No paving may be done under any adverse conditions, as determined by the Town Engineer.
 - (3) Any sections of pavement not meeting the approval of the Town Engineer must be removed and replaced.
- E. REINSPECTION OF INCORRECT CONSTRUCTION. If the Town Engineer does not give written approval of the satisfactory completion of the earlier stage, or at any other time, and the Planning Director gives written notice to the developer that any of the facilities are not constructed per the approved subdivision plan, or do not follow the Standard Specifications, or are not constructed following good construction practice as determined by the Town Engineer, the developer must correct the construction of the facility so that it complies. The developer may not go ahead to a later stage of construction until the incorrect construction has been corrected and the Town Engineer issues a written statement that the construction complies. A site visit by the Town Engineer may be required, for which a fee is required.
- F. WATER AND SEWER MAINS
 - (1) With respect to water mains, services, hydrants, and appurtenances, the required inspections may be performed by the Town Engineer, or his or his designee. Repeat inspections will be required if any work is found not to have been satisfactorily performed.
 - (2) Before acceptance by the Town, all water and sanitary sewer lines must be tested to the satisfaction of the Town Engineer.
- G. COST. The cost of inspections must be borne by the applicant and those legally succeeding the applicant in title to the subdivision or any portion of them. They will be billed for the cost of inspections, including repeated inspections when necessary, when the cost exceeds the money left available from the consultant's Project Review Fees. Security for the construction of streets and utilities may not be released until all money owed the Town in connection with a subdivision has been paid.
- H. CERTIFICATION OF MONUMENTS. The required monuments (stone bounds or equivalent) must be set by or under the direct supervision of a Land Surveyor after all construction which could disturb them has been completed, and two copies of a plan of the subdivision (which may be the "as built" plans) must be submitted to the Board, showing the exact location and nature of the monuments set or found (identified as such), certified by a Land Surveyor.
- I. COMPLETION. Notwithstanding the inspections and verifications by the Board and its agents, the applicant, the surety company, if any, and those succeeding the applicant in title to the subdivision or portions of them are responsible for the subdivision being completed per the approved plans and these Regulations in a satisfactory condition, and without defects, when requesting release of performance guarantees.

8.3. Disposal of Debris and Waste.

No debris, junk, rubbish or other non-biodegradable waste materials may be buried, left, or burned on any land in the subdivision. Removal of such materials will be required before the final release of any covenant or surety. The Board of Health and the Town Engineer must approve burial of biodegradable materials on the site. Tree limbs, brush, and stumps are not considered biodegradable and may not be buried on the site. The burial locations and description of buried materials must be noted on the as-built plan. The Board may require that the description and location of buried materials be recorded in the Registry of Deeds before release of affected lots for sale or building.

8.4. Certificates of Occupancy during Construction

- A. RIGHTS OF WAYS. No Certificates of Occupancy may be issued until all work associated with the right of way construction is complete, except for the final top course of pavement.
- B. FIRE HYDRANTS. No certificate of occupancy will be issued until the Fire Department is satisfied with the results of any fire hydrant flow test(s) for any new hydrants installed.